



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,236	03/25/2004	Mehran Bashiri	S63.2P-11058-US02	9063
490 7590 04/08/2009 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344				
EXAMINER				
SONNETT, KATHLEEN C				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
04/08/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/809,236

Applicant(s)

BASHIRI ET AL.

Examiner

KATHLEEN SONNETT

Art Unit

3731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3,8-24,26-30,33-37,40,44 and 45
Claim(s) withdrawn from consideration: 41-43

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) _____.
13. ☒ Other: The amendment to the claims has been entered as shown in number 7 above (the amendment fixes a typographical error in claim 9). The claims remain finally rejected as presented in the office action mailed 1/29/2009.

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments regarding the 35 USC 103 rejections over Callol (US 6,585,757) in view of Globerman (US 6,428,570) and McGuiness (US 6,102,943) in view of Globerman are not found persuasive. As discussed in the final office action mailed 1/29/2009 regarding the limitation of the stent members consisting of first and second stent members, the curved portion of (14) can be considered a bridge that is not one of the claimed plurality of interconnected stent members. For example, this curved portion could be considered a connector which connects the "interconnected stent members". In other words, the transitional phrase of "comprising" in line 3 of the claim allows for additional elements in the stent. The use of "consisting" for the stent members only limits what is considered the plurality of interconnected stent members to the first and second stent members. Alternatively, if about half of the curved portion of (14) along with an adjacent entire straight portion of (14) is considered a second member, then the second member can be considered substantially longitudinal in the unexpanded state since a greater length of the second member is longitudinally directed. Applicant provided figures in their remarks filed 3/23/2009 pointing out "alleged second members". The "alleged" second members shown on page 11 of Applicant's remarks are closer to what the examiner is considering second members when the entire curved portion (14) is considered to be made up of a plurality of second members. However, the second members assigned by the examiner include the straight portion as well as half the curved portion distal and proximal of the straight portion. This member can be considered "substantially longitudinally directed" in the contracted position.